

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EDWARD JOSEPH MCNATT,	}	
Petitioner,	}	
v.	}	Civil Action No. 05-124 Erie
JUDGE OLIVER LOBAUGH, et al.,	}	
Respondents.	}	

MEMORANDUM ORDER

This habeas corpus action was received by the Clerk of Court on April 20, 2005, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 25], filed on January 29, 2007, recommended that Respondents' motion to dismiss for failure to exhaust state remedies [Doc. No. 20] be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner and on Respondents. Petitioner filed Objections on February 9, 2007 [Doc. No. 26].

In the Report and Recommendation, the Magistrate Judge recommended that Petitioner's habeas corpus petition be dismissed because he had failed to exhaust his state court remedies. Petitioner, at the time that he filed this action, had a PCRA petition pending before the Pennsylvania Superior Court which included claims also presented in the instant habeas petition. In his Objections, Petitioner informed the Court that he has voluntarily dismissed his PCRA petition and asserted that, consequently, he has exhausted his state remedies. However, a Petitioner may not bring about exhaustion of his own claims by filing a voluntary dismissal in state court; such a maneuver does not provide the state courts with a fair and full opportunity to review the merits of Petitioner's claims, as is intended by the exhaustion doctrine.

Thus, after de novo review of the motion and documents in the case, together with the Report and Recommendation and the objections thereto, the following order is entered:

AND NOW, this 26th day of March, 2007;

IT IS HEREBY ORDERED that the Respondents' motion to dismiss [Doc. No. 20] is GRANTED.

The Report and Recommendation [Doc. No. 25] of Magistrate Judge Baxter, filed on January 29, 2007, is adopted as the opinion of the Court.

Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge